

# Memo

To: **Montana Wheat & Barley Committee**

From: Terry Whiteside

Date: April 20, 2007

Re: **Transportation Report**



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**SENATORS ARE OUTRAGED AT THE STB's RECENT  
FEE INCREASES – STATING IT CONTINUES A PATTERN  
OF ACTIONS BY THE STB**

Eight leading Senators have crossed swords with the STB on the STB's recent decision to raise the standard filing fee for bringing a rate challenge to \$178,200.

The **Senators Rockefeller (WVa), Craig (ID), Dorgan (ND), Vitter (LA), Klobuchar (MN), Tester (MT) Landrieu (LA) and Baucus (MT)** in a strongly worded letter dated April 17, 2007 to Chairman Nottingham of the STB, indicated their 'concern that this steep rate increase falls into the unfortunate patter of actions by the STB.'

The Senators cited the recent GAO study which found inadequate competition in the rail industry and recommended actions the STB might take to resolve these issues which the STB has refused to take action to increase competition in the rail industry.

The Senators noted the GAO report also found the STB "processes to protect rail customers from railroad abuse of market power do not work, yet the STB has not yet developed a set of rail customer-friendly rules."

The STB after a year of complaints by rail customers and Members of Congress determined that the railroads have been 'double dipping' by overcharging rail customers through fuel surcharges and while the STB stopped this unreasonable

practice – they did not order refunds nor move to suspend the practice while it was going on.

In short, the letter stated that “Members of Congress increasingly are hearing from our rail customer constituents that the STB is not protecting rail customers from railroad abuses of market power as it was directed to do at its creation in 1985. Your recent decision on the issue filing fees tends to verify these concerns.”

The Senators then called upon the STB to “reconsider the filing fees increase and not only suspend the increase, but institute reasonable filling fees in line with the filing fees that plaintiffs pay for similar complaints filed in the United State District Courts.”

## United States Senate

WASHINGTON, DC 20510

April 17, 2007

The Honorable Charles D. Nottingham  
Chairman  
The Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

Dear Chairman Nottingham:

We are appalled to learn that the Surface Transportation Board (STB) has decided to increase the filing fee for standard rail rate challenges brought by rail customers to \$178,200. We believe that this level of filing fee for a complaint that, by law, can only be brought to the STB is simply unconscionable and will for most rail customers stand as an insurmountable barrier to seeking relief from railroad monopoly pricing. Were these cases jurisdictional to the federal courts, we understand that a complainant would be required to pay only a \$150 filing fee to seek justice.

We are concerned that this steep rate increase falls into an unfortunate pattern of actions by the STB:

- In October 2006 the Government Accountability Office (GAO) issued a report finding inadequate competition in the rail industry and recommending actions the STB might take to resolve these issues. The STB has flatly refused to take action to increase competition in the rail industry.
- The GAO report found that the STB processes that were developed to protect rail customers from railroad abuses of market power do not work. Since 1995, the STB has been attempting unsuccessfully to develop a useable set of rules and procedures for “small rate” cases. Last year, the STB proposed rules that rail customers universally view as the least rail customer-friendly rules yet proposed by the STB.
- Finally, after more than a year of complaints by rail customers and Members of Congress, the STB finally determined earlier this year that the major railroads have been “double dipping” and otherwise overcharging rail customers through fuel adjustment clauses. One economist estimates the four Class I railroads over-collected \$1 billion in 2005 alone and perhaps as much as \$3 billion over the last two and a half years. While the STB stopped this unreasonable rail practice after April 25<sup>th</sup> of this year, the agency neither ordered refunds nor moved to suspend this practice while it was occurring.

Nottingham, STB  
April 17, 2007

Members of Congress increasingly are hearing from our rail customer constituents that the STB is not protecting rail customers from railroad abuses of market power as it was directed to do at its creation in 1995. Your recent decision on the issue of filing fees tends to verify these concerns.


We ask you to reconsider immediately your filing fee increase and not only suspend the increase, but institute reasonable filing fees in line with the filing fees that plaintiffs would pay for similar complaints filed in the United States Districts Courts.

Sincerely,

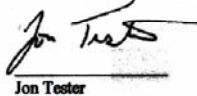
  
John D. Rockefeller IV

  
Larry Craig

  
Byron Dorgan

  
David Vitter

  
Amy Klobuchar

  
Jon Tester

  
Mary Landrieu

  
Max Baucus

Cc: Vice Chairman Buttrey  
Board Member Mulvey

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## **UP MOVES FROM REVENUE BASED FUEL SURCHARGES TO MILEAGE BASED FUEL SURCHARGES BUT DOES IT COMPLY WITH STB FUEL SURCHARGE RULING?**

### **Union Pacific railroad changes to mileage based Fuel Surcharge program**

The UP is changing from Revenue based fuel surcharges to mileage based fuel surcharges...and they are thwarting the STB ruling in Ex Parte 661....read on.

Effective April 26, 2007 the Union Pacific Railroad will publish new rates for all UP origin/destination pairs system wide. These new rates will be published at higher rate levels reflecting the addition of some of the fuel costs that were being surcharges by adding them into the base levels. Each new rate will be subject to a new Union Pacific fuel surcharge program that will be mileage based versus the old revenue based fuel surcharge program.

In effect what the Union Pacific has done is transfer a major portion of the fuel costs from fuel surcharge to the rate base. These old revenue based fuel surcharges were deemed to be illegally high by Ex Parte 661. What the UP is doing is dumping fuel charges into the base rate and then applying a lower fuel surcharge based on mileage rather than a percentage of the rate (See example below). The net affect right now is the overall tariff rate does not change very much. But the railroad is still charging for fuel inside the rate and recharging for some of the same fuel in the surcharge a practice that brought a 'double dipping' charge from the STB. The Surface Transportation Board's main concern in Ex Parte 661 – Fuel Surcharge was that the overall charges for fuel inside the rate plus the extra fuel surcharges were greater than the total of fuel charges that apply to the actual movement. (Double dipping)

# Wheat Shipments from various states to UP destinations:

		Old Rates April Fuel 12.5% / May Fuel 14.5%*					New Rates April Fuel 0.08 ¢/mile / May Fuel 0.12 ¢/mile				
		Before April 26, 2007					As of April 26, 2007				
		rate	\$/BU	Fuel	Total	\$/BU	rate	\$/BU	Fuel	Total	\$/BU
Idaho Falls Idaho to	April	\$ 2,560.00	\$ 0.76	\$ 320.00	\$ 2,880.00	\$ 0.86	\$ 2,816.00	\$ 0.84	\$ 79.84	\$ 2,895.84	\$ 0.86
	May *	\$ 2,560.00	\$ 0.76	\$ 371.20	\$ 2,931.20	\$ 0.87	\$ 2,816.00	\$ 0.84	\$ 119.76	\$ 2,935.76	\$ 0.87
Los Angeles, Ca- 998 miles	April	\$ 2,560.00	\$ 0.76	\$ 320.00	\$ 2,880.00	\$ 0.86	\$ 2,816.00	\$ 0.84	\$ 77.12	\$ 2,893.12	\$ 0.86
	May *	\$ 2,560.00	\$ 0.76	\$ 371.20	\$ 2,931.20	\$ 0.87	\$ 2,816.00	\$ 0.84	\$ 115.68	\$ 2,931.68	\$ 0.87
Oakland, Ca-964 miles	April	\$ 3,600.00	\$ 1.07	\$ 450.00	\$ 4,050.00	\$ 1.20	\$ 3,960.00	\$ 1.18	\$ 150.88	\$ 4,110.88	\$ 1.22
	May *	\$ 3,600.00	\$ 1.07	\$ 522.00	\$ 4,122.00	\$ 1.22	\$ 3,960.00	\$ 1.18	\$ 226.32	\$ 4,186.32	\$ 1.24
Laredo, TX-1886 miles	April	\$ 1,070.00	\$ 0.32	\$ 133.75	\$ 1,203.75	\$ 0.36	\$ 1,177.00	\$ 0.35	\$ 15.20	\$ 1,192.20	\$ 0.35
	May *	\$ 1,070.00	\$ 0.32	\$ 155.15	\$ 1,225.15	\$ 0.36	\$ 1,177.00	\$ 0.35	\$ 22.80	\$ 1,199.80	\$ 0.36
		Before April 26, 2007					As of April 26, 2007				
Limon Co to Houston(Gulf)-1157 miles	April	\$ 2,950.00	\$ 0.88	\$ 368.75	\$ 3,318.75	\$ 0.99	\$ 3,162.00	\$ 0.94	\$ 92.56	\$ 3,254.56	\$ 0.97
	May *	\$ 2,950.00	\$ 0.88	\$ 427.75	\$ 3,377.75	\$ 1.00	\$ 3,162.00	\$ 0.94	\$ 138.84	\$ 3,300.84	\$ 0.98
		Before April 26, 2007					As of April 26, 2007				
Salina KS to Houston(Gulf)-736 miles	April	\$ 2,750.00	\$ 0.82	\$ 343.75	\$ 3,093.75	\$ 0.92	\$ 2,948.00	\$ 0.88	\$ 58.88	\$ 3,006.88	\$ 0.89
	May *	\$ 2,750.00	\$ 0.82	\$ 398.75	\$ 3,148.75	\$ 0.94	\$ 2,948.00	\$ 0.88	\$ 88.32	\$ 3,036.32	\$ 0.90
		Before April 26, 2007					As of April 26, 2007				
Dillon MT to Houston(Gulf)-1907	April	\$ 3,435.00	\$ 1.02	\$ 429.38	\$ 3,864.38	\$ 1.15	\$ 3,779.00	\$ 1.12	\$ 152.56	\$ 3,931.56	\$ 1.17
	May *	\$ 3,435.00	\$ 1.02	\$ 498.08	\$ 3,933.08	\$ 1.17	\$ 3,779.00	\$ 1.12	\$ 228.84	\$ 4,007.84	\$ 1.19
		Before April 26, 2007					As of April 26, 2007				
Sidney NE to Houston(Gulf)-1407 miles	April	\$ 3,500.00	\$ 1.04	\$ 437.50	\$ 3,937.50	\$ 1.17	\$ 3,752.00	\$ 1.11	\$ 112.56	\$ 3,864.56	\$ 1.15
	May *	\$ 3,500.00	\$ 1.04	\$ 507.50	\$ 4,007.50	\$ 1.19	\$ 3,752.00	\$ 1.11	\$ 168.84	\$ 3,920.84	\$ 1.16
		Before April 26, 2007					As of April 26, 2007				
Enid OK to Houston(Gulf)-542 miles	April	\$ 2,520.00	\$ 0.75	\$ 315.00	\$ 2,835.00	\$ 0.84	\$ 2,701.00	\$ 0.80	\$ 43.36	\$ 2,744.36	\$ 0.82
	May *	\$ 2,520.00	\$ 0.75	\$ 365.40	\$ 2,885.40	\$ 0.86	\$ 2,701.00	\$ 0.80	\$ 65.04	\$ 2,766.04	\$ 0.82
		Before April 26, 2007					As of April 26, 2007				
Vale OR to Houston (Gulf)-2014 miles	April	\$ 3,735.00	\$ 1.11	\$ 466.88	\$ 4,201.88	\$ 1.25	\$ 4,109.00	\$ 1.22	\$ 161.12	\$ 4,270.12	\$ 1.27
	May *	\$ 3,735.00	\$ 1.11	\$ 541.58	\$ 4,276.58	\$ 1.27	\$ 4,109.00	\$ 1.22	\$ 241.68	\$ 4,350.68	\$ 1.29
		Before April 26, 2007					As of April 26, 2007				
Amarillo TX to Houston (Gulf)-605 miles	April	\$ 2,750.00	\$ 0.82	\$ 343.75	\$ 3,093.75	\$ 0.92	\$ 2,948.00	\$ 0.88	\$ 48.40	\$ 2,996.40	\$ 0.89
	May *	\$ 2,750.00	\$ 0.82	\$ 398.75	\$ 3,148.75	\$ 0.94	\$ 2,948.00	\$ 0.88	\$ 72.60	\$ 3,020.60	\$ 0.90
		Before April 26, 2007					As of April 26, 2007				
Duluth MN to Brownsville TX-1412 miles	April	\$ 4,350.00	\$ 1.29	\$ 543.75	\$ 4,893.75	\$ 1.45	\$ 4,785.00	\$ 1.42	\$ 112.96	\$ 4,897.96	\$ 1.46
	May *	\$ 4,350.00	\$ 1.29	\$ 630.75	\$ 4,980.75	\$ 1.48	\$ 4,785.00	\$ 1.42	\$ 169.44	\$ 4,954.44	\$ 1.47
		Before April 26, 2007					As of April 26, 2007				
Colfax WA to PNW -342 miles	April	\$ 1,239.00	\$ 0.37	\$ 154.88	\$ 1,393.88	\$ 0.41	\$ 1,363.00	\$ 0.40	\$ 27.36	\$ 1,390.36	\$ 0.41
	May *	\$ 1,239.00	\$ 0.37	\$ 179.66	\$ 1,418.66	\$ 0.42	\$ 1,363.00	\$ 0.40	\$ 41.04	\$ 1,404.04	\$ 0.42

\* Proforma - What tariff/ fuel Surcharge would be if UP had not changed to mileage based surcharges

**Stay tuned:**

It will be interesting to see how the Surface Transportation Board and Congressional Members view loading the rates with fuel and then adding more fuel surcharges in light of the Boards 'double dipping' allegations. If the railroads were OVER collecting on fuel surcharges before – this action by the UP will certainly continue the practice of overcharging.

The STB never sought to have the railroads rebate the excessive charges back to the rail customers even though some economists estimated the overcharging might exceed \$1 Billion!